IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2277 OF 2006
ALONG WITH
CHAMBER SUMMONS NO. 327 OF 2006
IN
WRIT PETITION (L) NO. 2277 OF 2006

Babulal Gerilal Hingad ... Petitioner

V/s.

Municipal Corp. of Gr. Bombay ... Respondents
and 3 ors.

Mr. R.D. Soni i/b. P.M. Havnur for the petitioner.
Mrs. S. Ajit kumar for respondent Nos. 1 & 2.
Mr. K.R. Belosey, Govt. Pleader for respondent Nos.3 & 4.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 8th December, 2006

P.C.

. In the petition at Para 11, the petitioner has averred that he purchased the structure in the year 1999 and started doing business of selling marble. The matter pertains to Town Planning Scheme. Arbitrator had issued notice to owner Shri Irani on 29.01.1974. No other claim was filed. The case of the petitioner was that it was an existing structure of one Bangera and petitioner is claiming right through the said Bangera and as per policy he is entitled to benefits thereof.

2. The petitioner approached this Court by way of

Writ Petition No. 1964 of 2004 which came to be disposed of on 13th August, 2002. The learned Bench noted that the petitioner's claim of alternate accommodation as per policy dated 15th May, 1989 has not been considered. One of the condition was that the case of censused huts existing since or prior to 1976 and in case of occupants in other tolerated temporary structures existing prior to the scheme alternative accommodation will be provided in the form of pitches in suburbs and extended suburbs. The learned Bench thereafter was pleased to dispose of the petition in terms of para 9 of the order. Pursuant to the direction issued by this Court the matter was heard by the Assistant Municipal Commissioner. By order of 17.06.2002, the Asstt. Municipal Commissioner rejected the case of the petitioner and directed him to remove the structure, after considering the documentary evidence and having arrived at the conclusion, that the structure was not in existence since year 1976 and as such the petitioner was not entitled to any benefit of alternate accommodation.

3. Aggrieved by the same, the petitioner preferred appeal to the State Government, which came

to be disposed of in March, 2006 and which is the subject matter of the chamber summons.

. From the order of Appellate Authority, it is clear that, what the petitioner was contending was that the shed was existing as an Automobile Garage belonging to Shri Bangera since 1970 and that the petitioner is doing business in the said plot. It was his contention that Shri Bangera was not given hearing and petitioner was in partnership with Shri Bangera. The contention of the respondent Corporation was that the construction was not authorised. The Appellate Authority noted that the Shri Irani had been given notice on 29.01.1974 and before the Arbitrator no other person had claimed any right. It was further recorded that the documents submitted were not clear about authorisation of the construction on the place and for the reasons set out in the order, the petition was rejected.

4. We have heard the learned counsel for the petitioner. From the averments in the petition, it is clear that insofar as petitioner is concerned, for the first time he claimd right in the structure on account of purchase in the year 1994 from Shri Bangera. Shri

Bangera himself has not filed any claim either before the Arbitrator or subsequent thereto. The entire case of the petitioner was that the structure of Bangera was existing and that he had purchased the same from Shri Bangera. The entire documentary evidence produced was considered, after this Court passed the order directing the authority to consider the petitioner's case. The contention of the petitioner was considered and rejected. The Appellate Authority has also applied its mind to the issue. We are of the opinion that the petitioner has been unable to make out a case that there was structure existing These are purely findings of facts.

5. In the light of that petition stands rejected.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]